

REMARKS

This amendment is responsive to the Final Office Action dated February 10, 2004. Claims 2 - 7 are pending in this application and have been rejected. Reconsideration is respectfully requested in light of the above amendments and following remarks.

The above amendment in claim 6 has been made in order to make claim 6 consistent with it's parent claim 3. Previously in parent claim 3 the term "object" was deleted and the term "a transparent nonflowing cell container which contains a microorganism colony" was inserted. Claim 6 and claim 7 when read together would result in claim 6 being effectively broader than claim 3, and referring to any object. For this reason, claim 6 has been amended to make it properly dependent from claim 3. It is respectfully submitted that this amendment does not create new issues for examination.

King '396

The Final Office Action bases all rejections upon King '396. King teaches a microorganism sample detecting apparatus where the microorganisms are caught on a membrane filter, then stained with a florescent material, and cultured for a short time and then subjected to staining (column 5, lines 52 - 64). King also teaches fixing of a microorganism sample on a standard slide glass (column 7, lines 49 - 52). Next, King teaches at column 8, lines

50 - 54 that the microorganism sample may be smeared on a slide (body fluid) or plated on growth media film. Still further, the specification at column 9, lines 15 - 20 teaches that samples obtained for meat, fish, fowl and dairy products could be plated on media film, incubated and inspected by the media method and apparatus of the current invention at designated intervals. This Applicant understands to mean intervals of time.

The only disclosure in '396 of a microorganism which is under growth is found in column 9, lines 15 - 20. However, this disclosure must also be interpreted in light of claim 3 found at column 10, lines 50 - 54. Claim 3 states that the microorganism sample is present on opaque growth media film. Claim 3 is an original disclosure claim found in the parent application 08/767,023 filed December 16, 1996. Therefore, claim 3 read in combination with the disclosure found in column 9 clearly teaches that '396 utilizes an opaque growth media film. The apparatus of Figure 1 where light passes through simply will not function with an opaque growth media because no light will reach the camera.

On the other hand, Applicant's claims without exception refer to a "light-permeable microorganism colony culture medium mixed with a sample" (claim 2). Or a transparent nonflowing cell container which contains a microorganism colony (claim 3).

Therefore, since King clearly teaches that the culture medium is opaque, claim 2 is not anticipated. Still further, claims 3 - 6 cannot be rendered obvious by King who fails to disclose a loading portion of a transparent nonflowing cell container which contains a microorganism colony under observation.

Stated another way, other than the disclosure found at column 9, lines 15 - 20, the King microorganisms are not colony culture mediums. Still further, King never teaches at any other location in the specification that the medium or holder is transparent where a colony culture is mixed with a sample for analysis.

While King teaches in Figure 1 a light source (26) and stage assembly (52) through which the light passes to reach a camera (31), it does not teach that the microorganism in this case is a culture. The microorganism is described as a stained sample, not as a culture. The only case where the culture is measured over time is found in column 9 where it is described as incubated and inspected by the method and apparatus of the current invention as designated intervals. However, as described in claim 3, this is opaque. Therefore, King clearly does not teach the use of a light permeable culture medium as claimed.

In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance, and early


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action in accordance thereof is requested. In the event there is any reason why the application cannot be allowed in this current condition, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems by Interview or Examiner's Amendment.

Respectfully submitted,



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